Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dr Nicole Aube Inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDS-DR, FFT
MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act) seeking:

- The return of their security deposit; and
- Recovery of the filing fee.

Pursuant to section 38.1 of the Act, an Interim Decision was made by an adjudicator on July 7, 2020, without a participatory hearing. In the Interim Decision the adjudicator ordered that the matter be reconvened as a participatory hearing.

This hearing dealt with a Cross-Application for Dispute Resolution filed by the Landlord under the Act, seeking:

- Outstanding rent; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord and the Landlord's spouse, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in their Application. At the request of the Landlord, a copy of the decision and any orders issued in their favor will be mailed to them at the mailing address provided in their Application

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that although similar, the name of the Landlord listed in the tenancy agreement and the Landlord's Application, a corporation, is different than the name of the Landlord listed in the Tenant's Applications, an individual. During the hearing all parties agreed that the Landlord is properly named in the tenancy agreement and the Landlord's Application. The Tenant's Application was amended accordingly to properly name the Landlord.

Preliminary Matter #2

The Landlord acknowledged receipt of the Tenant's Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, as well as the documentary evidence before me from the Tenant, by registered mail on June 30, 2020, and raised no concerns regarding service or timelines. As a result, I accepted the documentary evidence before me from the Tenant for consideration and the hearing of the Tenant's Application proceeded as scheduled.

Although the Landlord stated that they served the Tenant with the Notice of Dispute Resolution Proceeding Package for their own Application, as well as their own documentary evidence, shortly after filing their Application, the Tenant denied receipt. As a result, the Tenant stated that they were not aware that the Landlord had filed a claim against them. Despite the Landlord's assertion that they served the above noted documents as required, they could not provide me with any details regarding how these documents were served or a date for their service and submitted no documentary evidence to support that they were served, how they were served or when they were served.

The ability to know the case against you and to submit evidence in your defense is fundamental to the dispute resolution process. As a result, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept the Landlord's Application for consideration in this hearing as I am not satisfied that it was

served on the Tenant as required by the Act and the Rules of Procedure. As a result, I dismiss the Landlord's Application seeking unpaid rent with leave to reapply. As the Landlord's Application is dismissed, I decline to grant them recovery of the filing fee and I dismiss this portion of their Application without leave to reapply.

The hearing therefore proceeded based only on the Tenant's Application seeking the return of their security deposit and recovery of the $100.00 filing fee.

Issue(s) to be Decided

Is the Tenant entitled to the return of all, some, none, or double the amount of their security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on June 1, 2018, and was set to end May 31, 2019, after which time it would continue month to month. The tenancy agreement states that rent in the amount of $1,585.00 is due on the first day of each month and that a security deposit in the amount of $750.00 was paid. During the hearing the parties agreed that these are the correct terms of the tenancy agreement.

The Tenant stated that on May 31, 2020, they gave notice to end their tenancy by email effective the same date, May 31, 2020, and provided the Landlord with their forwarding address. The Landlord acknowledged receipt the following date on June 1, 2020. Both parties agreed that no rent was paid by the Tenant for July 2020, as the post dated rent cheque for July was cancelled by the Tenant.

Although the parties were in agreement that the Tenant vacated the rental unit on June 1, 2020, they disputed the date the tenancy ended. The tenant stated that it ended on June 1, 2020, when they vacated the rental unit. The Landlord disagreed, stating that the Tenant did not return the keys until June 3, 2020, which the Tenant acknowledged, and was not entitled under the Act to end the tenancy until June 30, 2020, by way of the notice to end tenancy sent by email on May 31, 2020. As a result, the Landlord argued that the tenancy did not end until June 30, 2020. Although the Tenant acknowledged giving short notice and not returning the keys until June 3, 2020, they stated that the tenancy could not have ended on June 30, 2020, as the Landlord already had a new

tenant in the rental unit by that date. When asked, the Landlord acknowledged that a new tenant moved into the rental unit on June 15, 2020.

The Landlord stated that as the rental unit was not left reasonably clean at the end of the tenancy, $110.00 of the security deposit was retained, the remaining balance of which was mailed to the Tenant and cashed by them on July 13, 2020. The Tenant disputed the Landlord's testimony that the rental unit was not left clean and argued that the Landlord was not entitled to retain any portion of their security deposit as there was no agreement for them to do so and they did not file an Application for Dispute Resolution seeking authorization to retain any portion of the security deposit as required. Although the Landlord acknowledged that there was no agreement to retain any portion of the Tenant's security deposit, they stated that as they believe that the tenancy did not end until June 30, 2020, their Application filed on July 9, 2020, was filed on time.

Although there was agreement that no move out condition inspection was completed, the parties disputed why. The Landlord stated that the Tenant gave very short notice and a move-out inspection therefore could not be scheduled, however, the Tenant argued that the Landlord did not respond to their attempts to schedule one. The parties also disagreed about whether a move in condition inspection and report were completed. The Landlord argued that the walk-through of the rental unit at the time the Tenant initially viewed the rental unit constitutes a condition inspection but agreed that no condition inspection report was completed. The Tenant disputed this testimony stating that no move in condition inspection was completed as the viewing of the rental unit prior to entering into the tenancy agreement does not count as a condition inspection.

Based on the above, the Tenant argued that the Landlord had no right to retain any portion of their security deposit and sought the return of double its amount, less the $640.00 already returned, plus recovery of the filing fee. The Landlord disagreed, stating that they were entitled to withhold the $110.00 as their Application was filed on time and therefore the Tenant is not entitled to have the amount of their security deposit doubled or the $110.00 retained returned to them.

Analysis

Based on the testimony of the parties and the documentary evidence before me, I am satisfied that the tenancy ended on June 1, 2020, the date both parties agreed that the Tenant vacated the rental unit. Although the Landlord argued that the tenancy did not

end until June 30, 2020, the earliest date the Tenant could have properly ended the tenancy by way of the notice to end tenancy emailed on May 31, 2020, I do not accept this argument. By the Landlord's own admission, the Tenant vacated the rental unit on June 1, 2020, and they Landlord agreed that they had a new tenant residing in the rental unit by June 15, 2020. As a result, I do not find that it would be possible for the Tenant's tenancy agreement to have continued until June 30, 2020, as argued by the Landlord.

There was agreement between the parties that no move in condition inspection report was completed and I do not find that the viewing of the rental unit prior to the commencement of the tenancy or the signing of the tenancy agreement constitutes a move in condition inspection under the Act. As a result, I am satisfied that the Tenant has not extinguished their right to the return of their security deposit as I find that the Landlord extinguished their rights in relation to the security deposit fists, pursuant to Policy Guideline 17, section B, subsection 8, and section 24(2) of the Act by failing to conduct a move in inspection and report as required by section 23 of the Act and by failing to serve a copy of the move in condition inspection report on the Tenant as required by the regulations.

As there was no agreement for the Landlord to retain any portion of the security deposit, and there is no evidence before me that the Landlord had another right under the Act to retain any portion of the deposit, I therefore find that the Landlord was obligated under section 38(1) of the Act to either return the Tenant's security deposit to them in full, or file a claim against it with the Residential Tenancy Branch (the Branch), by June 15, 2020, which is 15 days after the date the tenancy ended and the date that the Landlord acknowledged receiving the Tenant's forwarding address in writing, June 1, 2020.

Although the Landlord filed an Application with the Branch, I note that this Application was not submitted until July 9, 2020, and that the filing fee was not paid until July 16, 2020. As a result, I find that the Landlord's Application was not considered filed until July 16, 2020, in accordance with rule 2.6 of the Rules of Procedure. In any event, the Landlord did not seek retention of any portion of the Tenant's security deposit as part of their Application.

During the hearing the Landlord stated that they mailed $640.00 of the Tenant's security deposit to them in early July 2020, which the Tenant acknowledged cashing on July 13, 2020. As a result, and based on my findings above, I am satisfied that the Landlord did not return the Tenant's security deposit to them, in full, or file a claim

against it with the Branch, by June 16, 2020, as required by section 38(1) of the Act. Pursuant to section 38(6) of the Act and in accordance with section C, example A of Policy Guideline 17, I therefore find that the Tenant is entitled to $860.00 for double the amount of their $750.00 security deposit, less the $640.00 already returned.

As the Tenant was successful in their Application, I also award them recovery of the $100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore award the Tenant a Monetary Order in the amount of $960.00, and I order the Landlord to pay this amount to the Tenant.

Conclusion

The Landlord's Application seeking unpaid rent is dismissed with leave to reapply. The Landlord's Application for recovery of the associated filing fee is dismissed without leave to reapply.

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$960.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The Landlord is cautioned that costs of such enforcement are recoverable from them by the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 26, 2020

Residential Tenancy Branch